

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA — WESTERN DIVISION

ERIC FREEMAN,
Plaintiff,
vs.
CALIFORNIA DEPARTMENT
OF CORRECTION DIRECTOR
OF CORRECTION, et al.,
Defendants.

Case No. CV 08-3026-AHS (JWJ)
**MEMORANDUM AND ORDER
DISMISSING CIVIL RIGHTS
COMPLAINT WITH PREJUDICE
IN PART AND WITH LEAVE TO
AMEND IN PART**

I. BACKGROUND

On May 13, 2008, plaintiff Eric Freeman, a state prisoner proceeding pro se, filed in this Court a "Civil Rights Complaint" (hereinafter "Complaint"). This Court has screened the Complaint pursuant to 28 U.S.C. § 1915A, the Federal Rules of Civil Procedure and the Local Rules of the Central District of California. Plaintiff alleges that defendants Mr. Williams, Mr. Drayton, registered nurse (name unknown), Mr. and Mrs. Haws, David Tristan, Mr. and Mrs. Tilton, N. Motz, and Mr. and Mrs. Hnowles violated plaintiff's rights under the Eighth Amendment while plaintiff was incarcerated at the California State Prison in Lancaster, California. (Complaint, pp. (2-3) - (2-

1 12.)¹) Plaintiff named defendants Mr. Williams, Officer Draytoon, a registered
2 nurse (name unknown), Mr. and Mrs. Haws, David Tristan, Mr. and Mrs.
3 Tilton, N. Motz, and Mr. and Mrs. Hnowles in their individual and official
4 capacities. (Id. at (2-3) - (2-5.))

5 Plaintiff's Complaint alleges that defendants violated plaintiff's
6 constitutional rights by failing to provide adequate medical care and by placing
7 plaintiff in a cell with no lights and improperly functioning ventilation. (Id. at
8 (2-6) - (2-12.)) Specifically, plaintiff alleges the following: Mr. Williams, a
9 Sergeant with the California Department of Correction, was responsible for
10 plaintiff's placement in a dysfunctional cell. (Id. at 2-6.) Mr. Draytoon, a
11 Correction Officer, ignored plaintiff's complaints about the condition of the
12 cell, ignored plaintiff's threats to commit suicide, and laughed while plaintiff
13 began cutting himself. (Id. at 2-7.) A registered nurse (name unknown) failed
14 to provide adequate treatment or assistance while plaintiff attempted to
15 commit suicide by cutting his wrist. (Id. at 2-8.) The registered nurse also
16 used obscene language to instruct plaintiff to be quiet during his suicide
17 attempt. (Id. at 2-8.)

18 Mr. and Mrs. Haws, Wardens of the California Department of
19 Correction, failed to adequately supervise and train correctional staff, resulting
20 in a failure to provide medical care. (Id. at 2-11.) Mr. and Mrs. Tilton,
21 Directors of the California Department of Correction, failed to adequately
22 supervise and train correctional staff. (Id. at 2-12.) N. Motz, a registered
23 nurse supervisor, failed to "properly supervise or train the medical staff." (Id.
24 at 2-9.) Mr. and Mrs. Hnowles, Captains of Facility B at California
25 Department of Correction, failed to "properly supervise and train" the
26 employees in Facility B, causing injury to plaintiff. (Id. at 2-10.) Plaintiff is
27

28 ¹ Plaintiff re-numbered his complaint pages as "2-1" through "2-15."

1 seeking "\$30,000 from each defendant for pain/suffering/stress/injuries." (Id.
2 at 2-15.)

3 For the reasons discussed below, the Complaint is dismissed with
4 prejudice in part and dismissed with leave to amend in part.

5 6 II. STANDARD OF REVIEW

7 A court may dismiss a claim upon motion of the defendants or sua
8 sponte pursuant to Federal Rule of Civil Procedure 12(b)(6) for "failure to
9 state a claim upon which relief can be granted." See Wong v. Bell, 642 F.2d
10 359, 361-62 (9th Cir. 1981). A complaint may be dismissed for failure to state
11 a claim upon which relief can be granted if it appears beyond doubt that
12 plaintiff can prove no set of facts in support of the claim that would entitle him
13 to relief. See Hishon v. King & Spalding, 467 U.S. 69, 73, 104 S. Ct. 2229,
14 81 L. Ed. 2d 59 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46, 78 S. Ct.
15 99, 2 L. Ed. 2d 80 (1957)). In reviewing a complaint under this standard, the
16 Court must accept as true the allegations of the complaint in question,
17 Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S. 738, 740, 96 S. Ct.
18 1848, 48 L. Ed. 2d 338 (1976), construe the pleading in the light most
19 favorable to the plaintiff, and resolve all doubts in the plaintiff's favor. Jenkins
20 v. McKeithen, 395 U.S. 411, 421, 89 S. Ct. 1843, 23 L. Ed. 2d 404 (1969).
21 However, the "court is not required to accept legal conclusions cast in the form
22 of factual allegations that cannot reasonably be drawn from the facts alleged
23 [citations omitted]." Clegg v. Cult Awareness Network, 18 F.3d 752, 754 (9th
24 Cir. 1994).

25 Review of a complaint for failure to state a claim is generally limited to
26 the contents of the complaint. See Buckey v. City of Los Angeles, 968 F.2d
27 791, 794 (9th Cir.), cert. denied, 506 U.S. 999, 113 S. Ct. 599, 121 L. Ed. 2d
28 536 (1992). However, material which is properly submitted as part of the

1 complaint may be considered on a motion to dismiss, and such material is not
2 “outside” the complaint if the complaint specifically refers to the document(s)
3 and its authenticity is not questioned. See Branch v. Tunnell, 14 F.3d 449,
4 453 (9th Cir. 1994) (citations omitted), cert. denied, 512 U.S. 1219, 114 S.
5 Ct. 2704, 129 L. Ed. 2d 832 (1994). The Court may also properly consider
6 material submitted as exhibits to the complaint, see Hal Roach Studios v.
7 Richard Feiner & Co., 896 F.2d 1542, 1555 (9th Cir. 1990), and documents
8 crucial to the plaintiff’s claims, but not explicitly incorporated in the
9 complaint. See Parrino v. FHP, Inc., 146 F.3d 699, 705-06 (9th Cir.), cert.
10 denied, 525 U.S. 1001, 119 S. Ct. 510, 142 L. Ed. 2d 423 (1998) (citing
11 Branch v. Tunnell, 14 F.3d at 454). The Court may properly consider matters
12 of public record: for example, pleadings, orders and other papers on file in
13 another action pending before the court, records and reports of administrative
14 bodies, or the legislative history of laws, rules or ordinances. See Mack v.
15 South Bay Beer Distributors, Inc., 798 F.2d 1279, 1282 (9th Cir. 1986).

16 The complaint may be dismissed where it discloses some fact that will
17 necessarily defeat the claim. Franklin v. Murphy, 745 F.2d 1221, 1228-29
18 (9th Cir. 1984). However, in a pro se civil rights case, the complaint must be
19 construed liberally to afford the plaintiff the benefit of any doubt. Karim-
20 Panahi v. Los Angeles Police Department, 839 F.2d 621, 623 (9th Cir. 1988).
21 Before dismissing a pro se civil rights complaint for failure to state a claim, the
22 plaintiff should be given a statement of the complaint’s deficiencies and an
23 opportunity to cure. Id. Only if it is absolutely clear that the deficiencies
24 cannot be cured by amendment should the complaint be dismissed without
25 leave to amend. Karim-Panahi, 839 F.2d at 623; see also Cato v. United
26 States, 70 F.3d 1103, 1106 (9th Cir. 1995).

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III. DISCUSSION

A. Prison Officials

Plaintiff names a Sergeant, a Correction Officer, a registered nurse, two Wardens, three Directors, a registered nurse supervisor, and two Captains in the California Department of Correction as defendants in their official and individual capacities. (Complaint, pp. (2-3) - (2-5.)) However, the Eleventh Amendment provides that the federal judiciary power “shall not be construed to extend to any suit in law or equity, commenced against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.” U.S. Const. Amend. XI. “The Eleventh Amendment bars both a federal court action for damages (or other retroactive relief) brought by a citizen against a state and such a federal court action brought by a citizen against a state official acting in his official capacity.” Pena v. Gardner, 976 F.2d 469, 472 (9th Cir. 1992). Since suits for retroactive relief against state officials in their respective official capacities generally constitute suits against the state itself, federal courts lack jurisdiction to entertain such suits – although individual-capacity claims against state officials face no Eleventh Amendment jurisdictional barrier. See Hafer v. Melo, 502 U.S. 21, 25, 112 S. Ct. 358, 116 L. Ed. 2d 301 (1991).

Therefore, the Complaint is dismissed with prejudice as to the above named defendants in their respective official capacities to the extent that plaintiff seeks an award of damages.

B. California Department of Correction

Plaintiff also appears to name the California Department of Correction as a defendant in the caption of the Complaint.² Much like the state officials

² Plaintiff does not separate “California Department of Correction” and “Director of Correction” with a comma in the caption of the Complaint, leaving the possibility that plaintiff intends to name the Director of Correction of the Department but not the Department itself. This

mentioned above, “[i]n the absence of waiver by the state or a valid congressional override, ‘[u]nder the eleventh amendment, agencies of the state are immune from private damage actions or suits for injunctive relief brought in federal court.” Dittman v. State of California, 191 F.3d 1020, 1025 (9th Cir. 1999) (citing Mitchell v. Los Angeles Community College Dist., 861 F.2d 198, 201 (9th Cir. 1989)). The State of California has not waived its Eleventh Amendment immunity with respect to claims brought under § 1983 in federal court, see Atascadero State Hosp. v. Scanlon, 473 U.S. 234, 241, 105 S. Ct. 3142, 87 L. Ed. 2d 171 (1985) (holding that the California Constitution does not waive immunity from federal court jurisdiction), and the Supreme Court has held that § 1983 was not intended to abrogate a State’s Eleventh Amendment immunity, Kentucky v. Graham, 473 U.S. 159, 169 n. 17, 105 S. Ct. 3099, 87 L. Ed. 2d 114 (1985). Dittman v. State of California, 191 F.3d at 1025.

Accordingly, the Complaint is dismissed with prejudice as to the California Department of Correction.

C. Specificity of Claims and Causal Connection.

The Civil Rights Act provides for relief only against those who are personally involved in the deprivation of constitutionally protected rights. Abordo v. State of Hawaii, 902 F. Supp. 1220, 1227 (D. Hawaii 1995); Robeta v. Kirby, 328 F. Supp. 670, 674 (N.D. Cal. 1971). A complaint brought pursuant to 42 U.S.C. § 1983 requires plaintiff to plead that (1) defendants acted under color of state law and (2) deprived plaintiff of rights secured by the Constitution or federal statutes. See West v. Atkins, 478 U.S. 42, 48, 108 S. Ct. 2250, 2254-55, 101 L. Ed. 2d 40 (1988); Gibson v. United States, 781 F.2d 1334, 1338 (9th Cir. 1986). The complaint must allege in specific terms

Court will construe the caption to include California Department of Correction as a defendant.

1 how each defendant is involved; there can be no liability under 42 U.S.C. §
2 1983 unless there is an affirmative link or connection between the defendants'
3 actions and the claimed deprivations. See Rizzo v. Goode, 423 U.S. 362, 372-
4 73, 96 S. Ct. 598, 604, 46 L. Ed. 2d 561 (1976); May v. Enomoto, 633 F.2d
5 164, 167 (9th Cir. 1980). Vague and conclusory allegations of participation in
6 civil rights violations are insufficient. Ivey v. Board of Regents, 673 F.2d 266,
7 268 (9th Cir.1982). Accordingly, a civil rights complaint must allege in
8 specific terms how each defendant is involved; conclusory allegations are
9 insufficient to state a claim. See Sherman v. Yakahi, 549 F.2d 1287, 1290
10 (9th Cir. 1977). In addition, a negligent act by a person acting under color of
11 state law does not rise to the level of a constitutional violation. County of
12 Sacramento v. Lewis, 523 U.S. 833, 847-48, 118 S Ct. 1708, 140 L.Ed.2d
13 1043 (1998); Daniels v. Williams, 474 U.S. 327, 333, 106 S.Ct. 662, 88
14 L.Ed.2d 662 (1986).

15 Furthermore, Rule 8(a) of the Federal Rules of Civil Procedure requires
16 sufficient allegations to put the defendants fairly on notice of the claims against
17 them. McKeever v. Block, 932 F.2d 795, 797 (9th Cir. 1991). Plaintiff must
18 allege with at least some degree of particularity overt acts which defendants
19 engaged in that support plaintiff's claim. McHenry v. Renne, 84 F.3d 1172,
20 1178 (9th Cir. 1996). A district court may dismiss an action for a pro se
21 party's failure to comply with Rule 8(a) if meaningful, less drastic sanctions
22 have been explored. Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 674
23 (9th Cir. 1981).

24 To put the defendants fairly on notice of the claims against them,
25 plaintiff must state the constitutional right that was violated by each defendant
26 and specifically how the violation occurred. Rizzo, 423 U.S. at 372-73. Here,
27 plaintiff has failed to allege any facts to support a constitutional claim against
28 defendants Mr. and Mrs. Haws (Wardens), David Tristan (Director), Mr. and

Mrs. Tilton (Directors), N. Motz (registered nurse supervisor), and Mr. and Mrs. Hnowles (Captains of Facility B). Although plaintiff makes conclusory statements regarding a failure to properly supervise and train, he fails to address specifically how each of these defendants violated his constitutional rights.³ (Complaint, pp. (2-9) - (2-12.)) Plaintiff fails to allege specific acts or omissions with any degree of particularity. Accordingly, the Complaint must be dismissed with leave to amend as to the above named individual-capacity defendants to allow plaintiff an opportunity to set forth these things: each constitutional violation, the defendants that allegedly violated that particular constitutional right, and facts supporting plaintiff's claim that each defendant specifically violated that constitutional right.

ORDER

For all the foregoing reasons, **IT IS HEREBY ORDERED AS FOLLOWS:**

1. The Complaint is **dismissed with prejudice** as to defendants Mr. Williams, Mr. Draytoon, a registered nurse (name unknown), Mr. and Ms. Haws, David Tristan, Mr. and Mrs. Tilton, N. Motz,

³ Plaintiff is advised that supervisory personnel are generally not liable in a civil rights action on any theory of respondeat superior or vicarious liability in the absence of a law imposing such liability. Redman v. County of San Diego, 942 F.2d 1435, 1446 (9th Cir. 1991) (en banc); Hansen v. Black, 885 F.2d 642, 645-46 (9th Cir. 1989). A supervisory official may be liable only if he or she was personally involved in the constitutional deprivation, or if there was a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation. Redman v. County of San Diego, 942 F.2d at 1446-47; Hansen v. Black, 885 F.2d at 646. Furthermore, a supervisor may be liable for constitutional violations by his or her subordinates if the supervisor knew of the violations and failed to prevent them, Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989), or if the alleged deprivation resulted from a failure to properly train or supervise personnel. Ybarra v. Reno Thunderbird Mobile Home Village, 723 F.2d 675, 680-81 (9th Cir. 1984).

1 and Mr. and Mrs. Hnowles in their official capacities to the extent
2 that plaintiff seeks monetary damages from the defendants;

3 2. The Complaint is **dismissed with prejudice** as to the California
4 Department of Correction; and

5 3. The Complaint is **dismissed with leave to amend** as to
6 Mr. and Mrs. Haws, David Tristan, Mr. and Mrs. Tilton, N. Motz,
7 and Mr. and Mrs. Hnowles in order to allow plaintiff to remedy
8 the deficiencies detailed above. (See pp. 6-8, supra.)

9 Plaintiff shall have **twenty-one (21)** days from the date of this Order to
10 file a First Amended Complaint. The First Amended Complaint must comply
11 with all the applicable provisions of the Prison Litigation Reform Act, Pub. L.
12 No. 104-134, 110 Stat. 1321 (codified in Sections of Titles 18, 28 and 42
13 U.S.C.), the Federal Rules of Civil Procedure, and the Local Rules for the
14 Central District of California.

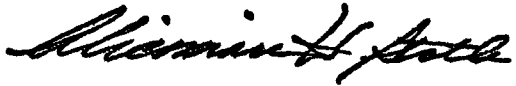
15 The First Amended Complaint must be labeled with the case number
16 assigned to this case, and must be labeled "First Amended Complaint." In
17 addition, plaintiff is informed that the Court cannot refer to a prior pleading in
18 order to make plaintiff's First Amended Complaint complete. Local Rule 15-2
19 requires that an amended complaint be complete in and of itself without
20 reference to any prior pleading. This is because, as a general rule, an amended
21 complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55,
22 57 (9th Cir. 1967).

23 The Court Clerk is directed to enclose with this Order two copies of the
24 form civil rights complaint for plaintiff's use in preparing a First Amended
25 Complaint.

26 Failure to file a First Amended Complaint in accordance with this Order
27 will result in a recommendation that this action be dismissed with prejudice as
28 to Mr. and Mrs. Haws, David Tristan, Mr. and Mrs. Tilton, N. Motz, and Mr.

1 and Mrs. Hnowles for failure to prosecute and/or failure to comply with this
2 Court's order. See Fed. R. Civ. P. 41(b); see also Link v. Wabash R.R., 370
3 U.S. 626, 629-30, 82 S.Ct. 1386, 1388, 8 L.Ed.2d 734 (1962).

4 DATED: JUL 24 2008

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6 ALICEMARIE H. STOTLER
7 CHIEF United States District Judge

8 Presented by:

9 DATED: July 22, 2008

10
11 
12 JEFFREY W. JOHNSON
13 United States Magistrate Judge